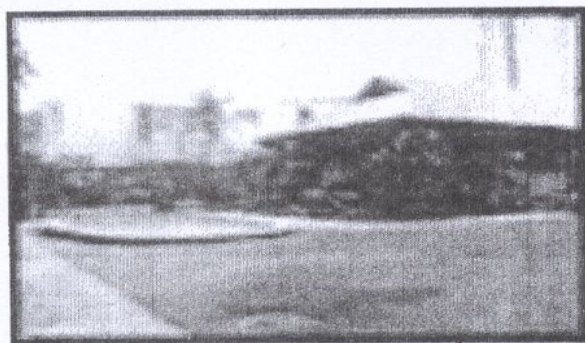
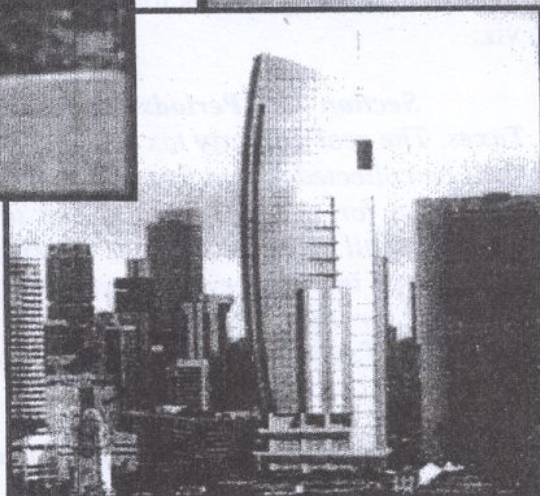


Implications of Section 270 of the Local Government Code (LGC)



**Re: Periods within
which to Collect
Real
Properties***



I. BACKGROUND INFORMATION

The real property tax (RPT) is a local imposition levied by provinces, cities and municipalities within Metro Manila on owners of land, building, machinery and other improvements.¹ It is composed of the basic real property tax and the Special Education Fund (SEF) tax which accrue to the local government unit (LGU) concerned and the local school boards, respectively. It is based on the assessed value of the property, which is derived upon the application of the assessment levels (in percentage) to the fair market value of the property.²

Prior to the Local Government Code (LGC) of 1991, the basic RPT was already one of the major sources of revenue of LGUs. It contributed an average of P2.2 billion annually to the LGUs' total income.³ Under the LGC, from CY 1992-2003, RPT collection declined,

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¹ Section 232 of the Local Government Code (LGC).

² Section 198 (g) and (h), Ibid.

³ NTRC, "A Survey on the Taxing and Other Revenue-Raising Powers of Local Governments." Vol. II, December, 1997.

with an average growth rate of only 15% (compared to 17% prior to the LGC), due to, among others, the increased reliance of LGUs on the Internal Revenue Allotment (IRA) which accounted for almost 67% of their total revenue.⁴

II. COMMENTS AND OBSERVATIONS

1. At present, the LGC provides for a five-year prescriptive period in collecting real property taxes, viz:

Section 270. Periods Within Which to Collect Real Property Taxes. *The real property tax and any other tax levied under this Title shall be collected within five (5) years from the date they become due. No action for the collection of the tax, whether administrative or judicial, shall be instituted after the expiration of such period. In case of fraud or intent to evade payment of the tax, such action may be instituted for the collection of the same within ten (10) years from the discovery of such fraud or intent to evade payment.*

The period of prescription within which to collect shall be suspended for the time during which:

- (a) *The Local Treasurer is illegally prevented from collecting the tax;*
- (b) *The owner of the property or the person having legal interest therein requests for reinvestigation and executes a waiver in writing before the expiration of the period within which to collect; and*
- (c) *The owner of the property or the person having legal interest therein is out of the country or otherwise cannot be located.*

2. Prior to the LGC, there was no provision similar to Section 270 under the former law. Presidential Decree (PD) No. 464⁵ only provided for the non-collection of back taxes beyond 10 years preceding the initial declaration of property.⁶ The provision on the prescriptive period per Section 270 is one of the major changes under the new Code. Apparently, however, this new section has never been operational in most LGUs. Local treasurers who have adopted the said section usually have different interpretations. In a workshop⁷ conducted under the Land Administration and Management Project

⁴ Source of Basic Data: Annual Financial Report of Local Governments, Local Government Audit Office (LGAO), Commission on Audit (COA).

⁵ The governing law prior to the LGC which took effect on June 1, 1974.

⁶ Section 25, P.D. No. 464, Otherwise Known as the Real Property Tax Code.

⁷ Documentation Report: Workshop on RA 7160: Local Government Code, Tacloban City, February 16, 2004.

(LAMP)⁸, some of the participant-treasurers thought that the said section refers only to the period of collecting delinquent RPT accumulated for five years.⁹ The treasurer may compute the total amount of delinquency for information purposes but he/she cannot oblige the taxpayer to pay the whole amount.¹⁰

3. The Bureau of the Local Government Finance (BLGF)¹¹ clarified that the five-year prescriptive period was only provided to enforce the collection of real property tax within a specific span of time.¹² Hence, local treasurers cannot execute administrative or judicial remedies after the lapse of the five-year prescriptive period, but it does not mean that local treasurers can no longer collect delinquent taxes accruing for the period.¹³

4. It should be noted that the BLGF reiterated the same position on several occasions per DOF-BLGF issuances, as follows:

- (a) Addressed to the Provincial Treasurer of Zamboanga del Sur who encountered a taxpayer from the Municipality of Molave who was hesitant to pay his real property taxes from 1974 to the present;¹⁴
- (b) Addressed to the Provincial Treasurer of Bataan who came across a taxpayer-lawyer who invoked that his unpaid RPT beginning 1988 which is more than five (5) years old had already prescribed, thus offered to pay those only from 1993 onwards;¹⁵ and
- (c) Addressed to the City Treasurer of Cebu City who requested comments and/or recommendations relative to the provisions of Sections 270 and 283 because of a taxpayer who refused to pay his RPT from 1989 to 1990.¹⁶

5. The BLGF stressed in the abovementioned opinions that delinquent taxes prior to the effectivity of the Code were imprescriptible because Section 270 is prospective in

⁸ The LAMP is a long term commitment of the government of the Philippines to address the following perceived key land issues: (a) Weak and inefficient land administration system; (b) Rigid and outdated land administration and management policies; (c) Lack of accountability, transparency and focus on servicing the needs of the user agencies and members of the public of the current system; and (d) Multiple and inconsistent land valuation systems. (http://www.phil-lamp.org/aboutus_lam.htm)

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Atty. Voltaire Bicomong, Director, Policy Enforcement Service, BLGF.

¹² *Loc cit.*

¹³ Confirmed by the BLGF.

¹⁴ DOF-BLGF Opinion, 1st Indorsement. March 12, 1996.

¹⁵ DOF-BLGF Opinion, 2nd Indorsement. October 16, 1997.

¹⁶ DOF-BLGF Opinion, 3rd Indorsement. January 26, 1998.

application.¹⁷ Hence, those taxes due which accrued before December 31, 1991 cannot be written off. Though it was clearly stated in Section 534 that the LGC would repeal PD No. 464, delinquent property taxes, however, would still be governed by the former law, pursuant to Section 283 of the LGC, viz:

Section 283. Sale and Forfeiture Before the Effectivity of the Code. *Tax delinquencies, and sales and forfeiture of delinquent real property effected, before the effectivity of the Code shall be governed by the provisions of applicable laws then in force. (underscoring supplied)*

6. Section 270 should be construed in relation with the other provisions of the LGC. Under Section 254, the local treasurer is required to immediately post a notice of delinquency in publicly accessible and conspicuous places and publish it in a newspaper when the real property tax becomes delinquent. Thereafter, under Section 258, the local treasurer should issue and execute a warrant of levy. If there is no action coming from the taxpayer, the simultaneous institution of civil and judicial remedies such as the sale of real property at public auction and collection through courts of appropriate jurisdiction will be enforced. In practice, however, most local treasurers are hesitant to carry out these collection remedies because of lack of firm support from local officials.

7. On the part of the treasurer, on the other hand, the LGC also provides sanctions from light to grave penalties for failure to institute the aforementioned remedies. These include the payment of fine amounting to ₱1,000.00 or imprisonment of not less than one (1) month or not more than six (6) months or both or the worst case, dismissal from government service. The intention is to compel the treasurer to institute the remedies prescribed by the Code. For the record, no treasurer has been dismissed from the service due to non-enforcement of these collection remedies.¹⁸ This signifies the lack of intent to institute administrative and judicial remedies for delinquent property taxes.

8. The Implementing Rules and Regulations (IRR) of the LGC failed to provide for the guidelines on the application of Section 270. It just reiterated what is stipulated under the Code. In this regard, it is recommended that the Department of Justice (DOJ) be consulted about the proper interpretation of Section 270 of the LGC to enlighten the taxpayers about its application. Thereafter, the BLGF can issue its implementing guidelines¹⁹ in order to enforce Section 270 and its related provisions effectively. Without this initiative, LGUs will continue to be confused, thereby affecting their RPT collection. The firm support of the local chief executives is also necessary to be able to encourage the local treasurers to pursue collection by all means.

¹⁷ DOF-BLGF Opinion, 4th Indorsement, June 2, 1994.

¹⁸ Per interview with Atty. Voltaire Bicomong, BLGF.

¹⁹ One of the functions of the BLGF is to issue appropriate instructions/directives to local treasury and assessment officials relative to the enforcement of policies, rules and regulations. (<http://www.blgf.gov.ph/pages/function.php>)

9. Moreover, the aforementioned guidelines should include the responsibilities and duties of local treasurers as well as the sanctions/ penalties for failure to perform the same. The Treasurer, for instance, should monitor if all the notices were sent to their proper place of destination. The treasurer may employ a house-to-house collection if he/she finds out that the recipient of the notice/demand letter did not show interest in paying his/her delinquency. This is also effective especially in far-flung areas where tax information campaign is very limited.²⁰

10. Correspondingly, it is also recommended that the regular updating of the real property database in local Treasurer's Offices be undertaken to monitor their RPT delinquencies effectively. It will be helpful for them to track those delinquent RPTs which have prescribed or need to be collected. In effect, taxpayers could start a clean slate or be compelled to settle their tax dues.

11. It should be noted that Section 270 was patterned after the five-year prescriptive period for collection of taxes as provided under the National Internal Revenue Code (NIRC). The amended NIRC²¹ currently provides for the prescriptive period of three (3) years²² starting from the date when the return has been filed or due. In case of an amended return, the prescriptive period should start to run from the filing of the amended return if it is substantially different from the original return. This is to prevent the taxpayers from evading taxes by simply reporting losses and deductions in the original return and later filing an amended return when it is no longer possible for the government to make an assessment since the prescribed period had lapsed. Moreover, the BIR is deemed to have made an assessment if the notice of assessment is released, mailed or sent to the taxpayer within the three-year period.²³ It is not required that the notice be received by the taxpayer but its release must be clearly proved.²⁴

12. It should also be noted that the five-year prescriptive period provided under the LGC was originally intended to waive all back taxes five years prior to the Code's effectivity. The pertinent transcripts of the Senate Committee deliberation dated August 31, 1988 showed that all back taxes prior to 1983 were proposed to be waived.

During the deliberations on Section 270, it was also pointed out that in principle, taxes generally prescribe after five years.²⁵ Thus, it is imperative that local treasurers should enforce collection during the given period. If the local treasurer failed to collect the taxes due within the said period, tax delinquencies will be waived. If this provision was implemented

²⁰ NTRC, Local Finance Survey, 1991.

²¹ NIRC of 1997.

²² Section 203, NIRC.

²³ Flores, Florecita. National Internal Revenue Code, Annotated.

²⁴ *Ibid.*

²⁵ According to Mr. Eleuterio C. Dumogho, author of Section 270, Head of the Technical Working Group on the LGC, Senate.

from the effectivity of the Code, the accumulation of RPT delinquency could have been precluded.

13. It should be noted that a major factor in tax compliance is the perceived commitment of the taxing authority to prosecute tax offenders. The use of administrative/ civil remedies is a strong indicator of this intent and deterrent to tax evasion. It is the responsibility of the local treasurer to enforce administrative/ civil remedies which is largely a matter of political will.

14. Providing a prescriptive period is beneficial to the taxing authority since local treasurers are compelled to collect taxes promptly.²⁶ However, the Code does not clearly provide when the treasurer can perform his/her function in order to say that he/she collects promptly. Similar to the procedure of the BIR, the Bureau of Local Government Finance (BLGF) opined that if a local treasurer sends notices of delinquency and/ or demand letters for payment of delinquent taxes, the prescriptive period of five years shall not begin to run.²⁷ It is only when the treasurer concerned neglected to perform his/her mandated duties that he/she shall be faulted, giving rise to said prescriptive period. However, if the treasurer did not pursue the collection to its final conclusion (i.e. no actual collection was realized since no follow up measure was instituted), the purpose of the Code to enforce tax collection within the prescribed period will be defeated. Hence, the extent of the treasurer's responsibility/accountability in the collection of the tax should be defined clearly.

15. Section 270 is also advantageous to the taxpayers since they can be secured against unwarranted investigation if the treasurer failed to collect taxes within the five-year period.²⁸ The taxpayers may circumvent the law by not paying their taxes until its collection period has prescribed. However, the petitioning taxpayer should provide proof that the treasurer did not initiate any measure to collect, i.e. no demand letter/notice of delinquency was sent or no follow up measure was instituted after its release.

16. In general, although the five-year prescriptive period is already provided under the LGC, the real property tax delinquency still accumulates in most LGUs up to the present time. As of 2003, it is estimated that the real property tax gap²⁹ in the country is ₱ 60 billion. As mentioned, this is due primarily to Section 270's non-enforcement or wrong interpretation, among others. Contrary to the provision of the LGC, most local treasurers are still accepting payments from RPT delinquencies though the five-year period had lapsed. For one, this would be an additional source of revenue for them and second, most taxpayers are not aware of the prescriptive period provision under the LGC.³⁰ Treasurers would only "write off" the tax delinquency when the taxpayer insists that the tax due on him/her had already

²⁶ Republic vs. Ablaza, L-14519, July 26, 1960.

²⁷ DOF Opinion, 2nd Indorsement, 16 October 1997.

²⁸ Vol. 1, Philippine Tax Commission Report, 98.

²⁹ Total accumulated RPT delinquency.

³⁰ Per interview with the technical staff/chiefs of the Land Tax Division of the Treasurer's Office of Marikina, Muntinlupa, Parañaque, Las Piñas, Manila and Malabon.

prescribed. Moreover, no treasurer would admit that he/she did nothing during the period covered, hence, he/she could claim that the tax due is still collectible even up to the present.

17. The local government of Quezon City should be commended for its relentless efforts to collect and enforce the real property tax. Section 270 of the LGC was incorporated in their new Revenue Code as part of their collection remedies.³¹ Moreover, the simultaneous implementation of civil and administrative remedies was adopted by the City, with the following schedule:

- (a) First delinquent month – sending of notices of delinquency
- (b) After 10 working days of no response – sending of final notice of delinquency
- (c) After five working days of still no response – sending of warrant of levy through registered mail or personal delivery with proof of service (copy furnished City Assessor and Register of Deeds)
- (d) Publication in the newspaper of general circulation once a week for two consecutive weeks including the name of the owner of the delinquent property, amount of delinquency plus interest, description of the property and the date and place of the auction

This made the real property tax a stable source of the City's revenues after years of fiscal deficit.

III. CONCLUSION

Based on the foregoing, the strict implementation of Section 270 of the LGC and its related provisions particularly the sanctions for failure to institute administrative and judicial remedies under Section 259 is imperative. Tax delinquencies which are not collected within the five-year period should be automatically written off. In effect, local treasurers will be compelled to collect RPT promptly. This would strengthen Section 270's objective to raise significant amount of revenue from RPT, thereby, eventually eradicating tax delinquencies.

³¹ Section 14(c), Quezon City Revenue Code, 2000.